

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF

**BAHAR DEVELOPMENT, INC.
BAHA TOWERS LIMITED PARTNERSHIP
ORLEANS PARISH**

AGENCY INTEREST NO. 38717, 66319

**PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT,
La. R.S. 30:2001, ET SEQ.**

* **ENFORCEMENT TRACKING NO.**
* **AE-P-97-0041; AE-P-97-0041A;**
* **AE-P-97-0041B**
* **DOCKET NO. EQ-AP-97024**
*
* **ENFORCEMENT TRACKING NO.**
* **AE-P-98-0257; AE-P-98-0257A**
*
* **ENFORCEMENT TRACKING NO.**
* **AE-NP-98-0200; AE-NP-98-0200A**
*
*

SETTLEMENT

The following Settlement is hereby agreed to between Bahar Development, Inc., Baha Towers Limited Partnership, (joint Respondents) and the Department of Environmental Quality, (Department), under authority granted by the Louisiana Environmental Quality Act, LSA- R.S. 30:2001, et seq., (the "Act").

I.

Respondents owned and/or operated the Plaza Tower Office Building, located at 1001 Howard Avenue, New Orleans, Louisiana and were renovating or demolishing parts of its interior. This building contains Regulated Asbestos Material or Asbestos Containing Material as defined in LAC 33:III.5151 et seq. and LAC 33:III.2703 et seq. (hereafter collectively referred to as RACM) that was blown on or sprayed in the above ceiling area.

II.

On April 2, 1997, the Department issued a Penalty Assessment, Enforcement No. AE-P-97-0041, to Respondents, Bahar Development, Inc. and Baha Towers Limited Partnership, in the amount of \$50,000.00, attached hereto and made a part of this Settlement as Exhibit A.

III.

On July 6, 1998, the Department issued an Amended Penalty Assessment, Enforcement No. AE-P-97-0041A, to Respondents, Bahar Development, Inc. and Baha Towers Limited Partnership, in the amount of \$20,000.00, attached hereto and made a part of this Settlement as Exhibit B.

IV.

On October 9, 1998, the Department issued a Notice of Violation and Potential Penalty, Enforcement No. AE-NP-98-0200, to Respondent, MBA Services, L.L.C, attached hereto and made a part of this Settlement as Exhibit C. AE-NP-98-0200 was later amended by the Department removing MBA Services, L.L.C. as the Respondent, by naming the proper Respondents, Bahar Development, Inc. and Baha Towers Limited Partnership, referred to below in Paragraph VIII.

V.

On December 11, 1998, the Department issued a Penalty Assessment, Enforcement No. AE-P-98-0257, to Respondents, Bahar Development, Inc. and Baha Towers Limited Partnership, in the amount of \$120,000.00, attached hereto and made a part of this Settlement as Exhibit D. and, in response thereto, Respondents made a timely request for a hearing.

VI.

On January 22, 2003, the Department issued a Second Amended Penalty Assessment, Enforcement No. AE-P-97-0041B, to Respondents, Bahar Development, Inc. and Baha Towers Limited Partnership, attached hereto and made a part of this Settlement as Exhibit E.

VII.

On February 16, 2003, the Department issued an Amended Penalty Assessment, Enforcement No. AE-P-98-0257A, to Respondents, Bahar Development, Inc. and Baha Towers Limited Partnership, attached hereto and made a part of this Settlement as Exhibit F.

VIII.

On February 17, 2003, the Department issued an Amended Notice of Violation & Potential Penalty, Enforcement No. AE-NP-98-0200A, to Respondents, Bahar Development, Inc. and Baha Towers Limited Partnership, attached hereto and made a part of this Settlement as Exhibit G.

IX.

The Department conducted inspections at Respondents' facility on May 28, 1996, June 7, 1996, June 26, 1996, and April 27, 1998, and noted various violations of the Act and Air Quality Regulations as stated in the Enforcement Actions attached hereto as Exhibits A through G.

X.

The Respondents deny they committed any of the alleged violations or that Respondents are liable for any fines, forfeitures and/or penalties.

XI.

Nonetheless, the Respondents, without making any admission of liability under state or federal statute or regulation, agree to pay, and the Department agrees to accept, a payment in the amount of EIGHTY THOUSAND AND NO/100 DOLLARS (\$80,000.00) to be paid in settlement of the alleged violations set forth in this agreement.

XII.

Respondents further agree that the Department may consider the inspection report(s), the Penalty Notices, and this Settlement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondents, and in any such action the Respondents shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondents' compliance history.

XIII.

This agreement shall be considered a final order of the secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondents hereby waives any right to administrative or judicial review of the terms of this agreement, except such review as may be required for interpretation of this agreement in any action by the Department to enforce this agreement.

XIV.

This settlement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in LSA- R. S. 30:2025(E) of the Act.

XV.

The Respondents have caused a public notice advertisement to be placed in the official journal of the parish governing authority in Orleans Parish. The advertisement, in form, wording, and size approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondents have submitted a proof-of-

publication affidavit to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

XVI.

Payment is to be made within thirty (30) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department.

Payment is to be made payable to the Department of Environmental Quality and mailed to the attention of Darryl Serio, Office of Management and Finance, Department of Environmental Quality, Post Office Box 82231, Baton Rouge, Louisiana, 70884-2231.

XVII.

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XVIII.

The total amount of money expended by the Respondent to DEQ, as set forth above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

XIX.

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his/her respective party, and to legally bind such party to its terms and conditions.

**BAHAR DEVELOPMENT, INC.
BAHA TOWERS LIMITED PARTNERSHIP**

BY: _____
(signature)

(Printed)

TITLE: _____

THUS DONE AND SIGNED in duplicate original before me this _____ day,
of _____, 20 _____, in _____.

NOTARY PUBLIC (ID _____)

(Printed or Typed)

STATE OF LOUISIANA

Mike D. McDaniel, Ph.D., Secretary
Department of Environmental Quality

BY: _____
Harold Leggett, Ph.D., Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this _____ day of
_____, 20 _____, at Baton Rouge, Louisiana.

NOTARY PUBLIC (ID # _____)

(Printed or Typed)

Approved: 
Harold Leggett, Ph.D., Assistant Secretary



State of Louisiana
Department of Environmental Quality



M.J. "MIKE" FOSTER, JR.
GOVERNOR

April 2, 1997

J. DALE GIVENS
SECRETARY

CERTIFIED MAIL-RETURN RECEIPT REQUESTED Z 441 766 624

2140-85889-005✓

38717

BAHAR Development, Inc.
BAHA Towers Limited Partnership,
Schumann Rafizadeh and Madonna Rafizadeh
Through Its Agent For
Service of Process
J. William Starr
Capella Law Firm
3445 North Causeway Boulevard, Suite 702
Metairie, Louisiana 70002

Dear Sir:

Enclosed please find a **PENALTY ASSESSMENT** from the State of Louisiana, Department of Environmental Quality, to BAHAR Development, Inc., BAHA Towers Limited Partnership, Schumann Rafizadeh and Madonna Rafizadeh, located at 1001 Howard Avenue, New Orleans, Orleans Parish, Louisiana.

The **PENALTY ASSESSMENT** is self-explanatory.

Sincerely,

Gustave Von Bodungen

Gustave Von Bodungen, P.E.
Assistant Secretary

GVB:TP

Enclosure

c: Ms. Sheyda N. Chaney
Executive Vice President
BAHAR Development, Inc.
1001 Howard Avenue
New Orleans, Louisiana 70113

EXHIBIT

A



BAHAR Development, Inc..

Page two

Ms. Myrna Edwards
Administrative Director
State of Louisiana Division of Administration
Facility Planning and Control
Post Office Box 94095
Baton Rouge, Louisiana 70804-9095

Southeast Regional Office

Nathan Levy

fl:baha.pn

STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF AIR QUALITY AND RADIATION PROTECTION
AIR QUALITY DIVISION

IN THE MATTER OF

BAHAR DEVELOPMENT, INC.
BAHA TOWERS LIMITED PARTNERSHIP
SCHUMANN RAFIZADEH AND
MADONNA RAFIZADEH
ORLEANS PARISH
NEW ORLEANS, LOUISIANA 70113

PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT,
La. R.S. 30:2001, et seq.

ENFORCEMENT TRACKING NO:
AE-P-97-0041

PENALTY ASSESSMENT

The following **PENALTY ASSESSMENT** is issued to BAHAR Development, Inc.,
BAHA Towers Limited Partnership, Schumann Rafizadeh and Madonna Rafizadeh (Respondent)
by the Louisiana Department of Environmental Quality (the Department), under the authority
granted by the Louisiana Environmental Quality Act (the Act), La. R.S. 30:2001, et seq., and
particularly by La. R.S. 30:2025 (E) and 2050.3.

FINDINGS OF FACT

I.

Respondent owns and is renovating a building known as the Plaza Tower, located at or
near 1001 Howard Avenue, New Orleans, Orleans Parish, Louisiana.

II.

On or about February 6, 1996, the Air Quality Division received a complaint of asbestos dust at Respondent's facility, Plaza Tower, located at or near 1001 Howard Avenue, New Orleans, Louisiana. On or about February 7, 1996, a representative of the Department performed a tour of some of the floors of the building to investigate the complaint of asbestos dust. After completion of the tour, the inspector met with members of Respondent's staff to discuss the complaint. At that time, the inspector also reviewed a maintenance and operation plan for the building with Respondent's staff. The inspector noted that several areas of the building have asbestos containing materials. At the time of the inspection, no evidence of asbestos violations was found.

III.

On or about March 5, 1996, a complaint was received by the Department that dust from the renovation project at Respondent's facility was going everywhere and the dust was suspected asbestos material. On or about March 5, 1996, a representative of the Department investigated the complaint at the Plaza Tower. The inspector found that while the areas being renovated contained asbestos, the asbestos material was not being disturbed. The inspector advised Respondent to have some air sampling conducted to confirm that the area was free of airborne asbestos.

IV.

On or about May 28, 1996, a representative of the Department conducted a complaint investigation of Respondent's facility located at or near 1001 Howard Avenue, New Orleans, Louisiana. The inspector was escorted on a tour of the Plaza Tower by a member of Respondent's staff and observed several floors of the building that were undergoing renovation

activities. During the course of the inspection, the inspector discovered that the Respondent had failed to provide a notification of intention to demolish or renovate to the Department. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.F.2.a and Section 2057 (A)(2) of the Act.

V.

Also on or about May 28, 1996, the inspection revealed that during the renovation activities at the Plaza Tower, asbestos containing fireproofing material was disturbed. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.F.3.a and Section 2057(A)(2) of the Act.

VI.

On or about May 28, 1996, the inspection also revealed the disturbed fireproofing material was dry and easily crumbled with hand pressure. This material is located on load bearing beams and is classified as Regulated Asbestos Containing Material (RACM) because of its friability. The Respondent failed to wet the RACM prior to and during the stripping operation. This is a violation of the Louisiana Air Quality Regulation, in particular LAC 33:III.5151.F.3.c and Section 2057(A)(2) of the Act.

VII.

On or about May 28, 1996, the inspection also revealed that Respondent had failed to adequately wet the RACM and ensure that it remains wet until collected and contained for disposal. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.F.3.f.i and Section 2057(A)(2) of the Act.

VIII.

On or about May 28, 1996, the inspection revealed that Respondent failed to have a least one asbestos abatement contractor/supervisor present during response actions and all asbestos abatement workers who were performing response actions were not supervised by an asbestos contractor/supervisor. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.F.3.h and Section 2057(A)(2) of the Act.

IX.

On or about May 28, 1996, the inspection also revealed that the Respondent failed to dispose of all asbestos-containing waste material as soon as practical at a waste disposal site. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.J.2.a and Section 2057(A)(2) of the Act.

X.

On or about June 7, 1996, a representative of the Department made a complaint investigation at Respondent's facility located at or near 1001 Howard Avenue, New Orleans, Louisiana. The investigation revealed that there was disturbed asbestos fireproofing material in four rooms on the 15th floor. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.F.3.a and Section 2057(A)(2) of the Act. During the course of the inspection, the inspector explained to members of Respondent's staff that because a state agency was leasing a portion of the building, a management plan is required to be on site and the disturbing of any material containing asbestos of greater than 1% is regulated by LAC 33:III.Chapter 27 and Chapter 51. The inspector also explained to members of Respondent's staff the procedures that must be taken when disturbing and removing the asbestos material and that

qualified and certified company personnel must be utilized when handling the asbestos containing material and the proper disposal of the asbestos materials must be performed as defined in LAC 33:Chapters 27 and 51.

XI.

On or about June 26, 1996, an investigation was conducted by members of the Department at Respondent's facility, The Plaza Tower, located at or near 1001 Howard Avenue, New Orleans, Louisiana. The inspection on the 11th floor revealed that small piles of construction debris were found throughout the work area. Pieces of fireproofing previously identified as asbestos containing material were identified in the piles. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.F.3.a and Section 2057(A)(2) of the Act. A sample was taken from the debris on the 11th floor and found to be positive for asbestos.

XII.

During the inspection of the 11th floor on or about June 26, 1996, the inspector observed holes drilled in the concrete ceiling for hangers to support the sprinkler system piping. The holes were in the areas of fireproofing overspray and were of the type usually drilled with a hammer drill. Using a hammer drill causes significant vibration which can cause damage to the asbestos containing building material (ACBM).

XIII.

On or about June 26, 1996, an inspection on the 15th floor by a representative of the Department revealed significant asbestos contamination which did not exist when the representative inspected the floor on or about June 7, 1996. A sample was taken from this area and found to be positive for asbestos.

XIV.

On or about July 1, 1996, an **EMERGENCY CEASE AND DESIST ORDER** was issued to the Respondent for the following violations:

1. May 28, 1996, for failing to remove all RACM from the facility before beginning any activity that would disturb the material or preclude access to the material for subsequent removal on the 9th, 10th, 11th, 16th and 17th floors in violation of LAC 33:III.5151.F.3.a. Approximately three (3) cubic yards of RACM were disturbed during the renovation activities.
2. June 26, 1996, for failing to remove all RACM from the facility before beginning any activity that would disturb the material or preclude access to the material for subsequent removal on the 11th floor in violation of LAC 33:III.5151.F.3.a. Investigation revealed that piles of construction debris containing asbestos fireproofing were identified throughout the work area. Holes had been drilled into the concrete ceiling covered by asbestos fireproofing to attach hangers to support the sprinkler system piping.
3. June 26, 1996, for failing to adequately wet and control asbestos emissions during removal in violation of LAC 33:III.5151.F.3.c. The construction debris piles contained dry RACM. The air-conditioning system was on and workers were seen leaving the 11th floor and getting on the elevators that serve the building occupants. No decontamination system was observed and passive air monitoring samples on this floor were as high as 57.7s/mm2 using TEM methods.

4. June 26, 1996, after the RACM was removed, for failing to adequately wet the material and ensure that it remained wet until collected and contained or treated in preparation for disposal in violation of LAC 33:III.5151.F.3.f.i.
5. June 26, 1996, for failing to wet and seal all ACM in leak-tight, clear, transparent containers while wet, in violation of LAC 33:III.5151.J.1.a.iii.
6. May 28, 1996 and June 26, 1996, for failing to submit to the Department a notice of intention to demolish or renovate, before removing RACM in violation of LAC 33:III.5151.F.2.a
7. Respondent was advised to discontinue asbestos abatement activities until compliance with the asbestos regulations was achieved. Respondent was ordered to immediately cease and desist operations that strip, remove, dislodge, cut, drill, or otherwise handle or disturb asbestos at the facility.

XV.

As a result of a meeting held on or about July 11, 1996, with representatives of the Department and the Respondent to address the violations noted in the Emergency Cease and Desist Order, Respondent was authorized to conduct those activities stipulated in the Order. This authorization served to terminate the Order and was fully contingent upon strict compliance with the applicable provisions of LAC 33:III.5151 and Chapter 27 of the Louisiana Air Quality Regulations.

XVI.

On or about August 13, 1996, a Notice of Violation and Potential Penalty (NOVPP), AE-N-96-0121, was issued to Respondent for the following violations:

1. LAC 33:III.5151.F.2.a
2. LAC 33:III.5151.F.3.a
3. LAC 33:III.5151.F.3.c
4. LAC 33:III.5151.F.3.f.i
5. LAC 33:III.5151.F.3.h
6. LAC 33:III.5151.J.1.a.iii
7. LAC 33:III.5151.J.2.a

XVII.

On or about September 9, 1996, an enforcement meeting was held with representatives of the Department and Respondent. The purpose of the meeting was to discuss the NOVPP (AE-N-96-0121) issued to Respondent on or about August 13, 1996. During the meeting, Respondent was requested to submit to the Department a list of all contractors used by Respondent as well as the gross revenues generated for 1995. A written response was also requested to address all points of the NOVPP. The requested information was to be submitted to the Department by October 4, 1996.

XVIII.

On or about October 4, 1996, Respondent submitted to the Department a written response to the NOVPP (AE-N-96-0121) dated August 13, 1996. Information requested for the gross revenues for 1995 as well as the list of contractors used on Respondent's facility located at or near 1001 Howard Avenue, New Orleans, Louisiana was not submitted as requested in the enforcement meeting on or about September 9, 1996.

XIX.

A civil penalty under Section 2025 (E) and 2050.3 of the Act may be assessed for the violations described herein.

XX.

Having considered the factors set forth in Section 2025 (E)(3) of the Act, and in light of all facts and circumstances presently known, a civil penalty would be appropriate, equitable and justified.

ASSESSMENT

I.

A penalty in the amount of \$50,000.00 is hereby assessed, together with legal interest as allowed by law and all costs of bringing and prosecuting this enforcement action.

II.

The Respondent has a right to an adjudicatory hearing on a disputed issue of material fact or of law arising from this **PENALTY ASSESSMENT**. This right may be exercised by filing a written request with the secretary no later than thirty (30) days after receipt of this **PENALTY ASSESSMENT**.

III.

The request for adjudicatory hearing shall specify the provisions of the **PENALTY ASSESSMENT** on which the hearing is requested and shall briefly describe the basis for the request. This request should reference the number which is located in the upper right hand corner of the first page of this document and should be directed to the following:

Louisiana Department of Environmental Quality
Office of Legal Affairs and Enforcement
Attention: Barry Brooks
Post Office Box 82282
Baton Rouge, Louisiana 70884-2282

IV.

Upon Respondent's timely filing a request for a hearing, a hearing on the disputed issue of material fact or of law regarding this **PENALTY ASSESSMENT** may be scheduled by the Secretary of the Department. The hearing shall be governed by the Act, the Administrative Procedure Act (La. R.S. 49:950, et seq.), and the Department's Rules of Procedure. The Department may amend or supplement this **PENALTY ASSESSMENT** prior to the hearing, after providing sufficient notice and an opportunity for the preparation of a defense for the hearing.

V.

This **PENALTY ASSESSMENT** shall become a final enforcement action unless the request for hearing is timely filed. Failure to timely request a hearing constitutes a waiver of Respondent's right to a hearing on a disputed issue of material fact or of law under Section 2050.4 of the Act for the violations described herein and the assessed penalty.

VI.

The Respondent must make full payment of the civil penalty assessed herein no later than fifteen (15) days after the assessment becomes final. Penalties are to be made payable to the Department of Environmental Quality and mailed to:

Darryl Serio
Department of Environmental Quality
Office of Management and Finance
P.O. Box 82231
Baton Rouge, Louisiana 70884-2231

VII.

Upon the penalty assessed herein becoming final because of Respondent's failure to timely file a request for a hearing, and upon Respondent's failure to pay the civil penalty provided herein or failure to make arrangements satisfactory to the Department for such payment, this matter shall be referred to the Attorney General for collection of the penalty plus all costs associated with the collection.

VIII.

For each violation described herein, the Department reserves the right to seek compliance with its rules and regulations in any manner allowed by law and nothing herein shall be construed to preclude the right to seek such compliance.

IX.

This ORDER is effective upon receipt.

Baton Rouge, Louisiana this 2ND day of APRIL, 1997.



GUSTAVE VON BODUNGEN, P.E.
ASSISTANT SECRETARY
DEPARTMENT OF ENVIRONMENTAL QUALITY

**Please serve Respondent through
its agent for service of process:**

**J. William Starr
Capella Law Firm
3445 North Causeway Boulevard, Suite 702
Metairie, Louisiana 70002**

**Copies of a request for hearing
and/or related correspondence
should be sent to:**

**B. J. Pritchard
Air Quality Division
P. O. Box 82135
Baton Rouge, LA 70884**

PENALTY ASSESSMENT FORM

Respondent Bahar Development, Inc. Plaza Towers
1001 Howard Avenue
New Orleans, Orleans Parish, Louisiana

The following check list shall be considered in assessing a penalty in accordance with R.S. 30:2025 E of the Environmental Quality Act.

Describe the Violation(s):

A complaint investigation conducted on or about May 28, 1996 at the Plaza Towers, located at 1001 Howard Avenue, New Orleans, Louisiana and additional inspections on or about June 7 & June 26, 1996, revealed the following violations:

- (a) Respondent failed to provide the administrative authority with a typed notice of intention to renovate. This is a violation of LAC 33:III.5151.F.2.a and Section 2057 (A) (2) of the Act.
- (b) Respondent failed to remove all of the Regulated Asbestos Containing Material (RACM) from the facility being renovated before any activity begins that would break up, dislodge, or similarly disturb the material. This is a violation of LAC 33:III.5151.F.3.a and Section 2057 (A) (2) of the Act.
- (c) Respondent failed to adequately wet the RACM prior to and during stripping operation and the work area was not controlled to prevent the release of asbestos containing material to the outside air. This is a violation of LAC 33:III.5151.F.3.c and Section 2057 (A)(2) of the Act.
- (d) Respondent failed to adequately wet the RACM and ensure that it remained wet until collected and contained for disposal. This is a violation of LAC 33:III.5151.F.3.f.i and Section 2057 (A) (2) of the Act.
- (e) Respondent failed to have at least one asbestos abatement contractor/supervisor present during response actions and all asbestos abatement workers who were performing response actions were not supervised by an asbestos contractor/supervisor. This is a violation of LAC 33:III.5151.F.3.h and Section 2057 (A) (2) of the Act.
- (f) Respondent failed to dispose of all asbestos-containing waste material as soon as is practical at an approved waste disposal site. This is a violation of LAC 33:III.5151.J.2.a and Section 2057(A)(2) of the Act.

1. The history of previous violations or repeated noncompliance:

Notice of Violation and Potential Penalty - August 13, 1996, for the following violations:

- (a) LAC 33:III.5151.F.2.a
- (b) LAC 33:III.5151.F.3.a
- (c) LAC 33:III.5151.F.3.c
- (d) LAC 33:III.5151.F.3.f.i

- (e) LAC 33:III.5151.F.3.h
- (f) LAC 33:III.5151.J.1.a.iii
- (g) LAC 33:III.5151.J.2.A

Emergency Cease and Desist Order - July 1, 1996

Deficiency Letter - October 24, 1996

2. The nature and gravity of the violation:

Asbestos has been proven to be harmful and sometimes fatal if inhaled or ingested. The manner in which the renovation/demolition was conducted at the site could have resulted in the release of asbestos fibers to the atmosphere where they could be inhaled or ingested.

Regulations concerning the proper removal and storage of asbestos-containing materials are available and these regulations were discussed with Respondent's staff on numerous occasions with discussions ensuing about asbestos regulations, management plans, air sampling and procedures that must be taken when disturbing and removing the asbestos material. The inspectors also explained to Respondent's staff that a qualified and certified company representative must be utilized when handling the asbestos containing material. Based on the inspector's discussions with the Respondent's during the inspections and the Emergency Cease and Order hand delivered to the Respondent on or about July 1, 1996, the Respondent was aware of the regulations and the necessity of complying with the regulations to protect the public. During the inspections, the inspectors emphasized to the Respondent the importance of complying with the Louisiana Air Quality Regulations, in particular LAC 33:III.5151 and Chapter 27.

3. The gross revenues generated by the respondent:

In an income and expense statement from Respondent dated October 31, 1996, Respondent's income was stated for year to date (YTD) as \$1,345,183.90.

4. The degree of culpability, recalcitrance, defiance or indifference to regulations or orders:

The Respondent owns and is renovating a building known as the Plaza Tower, 1001 Howard Avenue, New Orleans, Louisiana. Baha Towers, Limited Partnership has financial resources available to insure compliance with the regulations. The Respondent was made aware of the Louisiana Air Quality Regulations governing the handling of asbestos by the Department's inspector, on or about February 6, 1996, March 5, 1996 and June 7, 1996 during inspections at the Plaza Towers site. Respondent was also given an Environmental Study and Maintenance & Operation Plan by the previous owner of the building which identified the asbestos location in the Plaza Tower.

Respondent was requested during an enforcement meeting with Respondent and representatives of the Department on or about September 9, 1996, to provide the Department with a list of contractors and their contact person utilized by the Respondent on the renovation of Plaza Towers and for the gross revenues for 1995. The information was not received. The Department wrote a letter to Respondent on or about October 17, 1996, again requesting the above information. The information was not received. On or about December 16, 1996, a

representative of the Department had a telephone conversation with Ms. Shedy Chaney, Executive Vice President of BAHAR Development regarding the information requested in the enforcement meeting and the letter of October 17, 1996. Ms. Chaney agreed to Fax the information to the Department within the 1/2 hour. On or about December 17, 1996, about 12:00 pm, the requested information was received by the Department by FAX.

A follow-up inspection at the Plaza Tower on or about June 7, 1996, revealed the following violation: Disturbed asbestos fireproofing material was found in four rooms on the 15th floor. This a violation of LAC 33:III.5151.F.3.a and Section 2057(A)(2) of the Act.

A follow-up inspection at the Plaza Tower on or about June 26, 1996, revealed the following regulation was again violated: small piles of construction debris were throughout the work area and pieces of fireproofing previously identified as asbestos containing material were identified in the piles. This a violation of LAC 33:III.5151.F.3.a and Section 2057(A)(2) of the Act.

On or about July 1, 1996, an emergency Cease and Desist Order (No. AE-0-96-0097) was hand delivered to the Respondent, ordering the Respondent to immediately cease and desist operations that strip, remove, dislodge, cut, drill, or otherwise handle or disturb asbestos at the facility.

On or about July 11, 1996, the Department authorized Respondent to conduct those activities stipulated in Section I of the Order. The authorization was contingent upon Respondent being in strict compliance with the applicable provisions of LAC 33:III.5151 and Chapter 27 of the Louisiana Air Quality Regulations.

On or about October 22, 1996, a complaint investigation revealed that several ceiling tiles were missing and many of the tiles improperly replaced. This is a deficiency of LAC 33:III.5151.F.3.a and Section 2057(A)(2) of the Act.

Respondent was issued an Emergency Cease and Desist Order by the Department on or about July 1, 1996, and chose to be recalcitrant to the order as exemplified in a subsequent inspection at the Plaza Towers site on October 22, 1996.

On or about October 24, 1996 a Deficiency letter was issued to the Respondent for failing to remove all RACM from a facility before any activity begins that would break up, dislodge, or similarly disturb the material. This deficiency was found in a complaint investigation on or about October 22, 1996. This is a deficiency of LAC 33:III.5151.F.3.a and Section 2057(A)(2) of the Act. This deficiency revealed that the Respondent was deficient in adhering to the authorization to conduct those activities stipulated in Section 1 of the Emergency Cease and Desist Order (No. AE-0-96-0097) and contingent upon strict compliance with the applicable provisions of LAC 33:III.5151 and Chapter 27.

5. The monetary benefits realized through noncompliance:

A monetary benefit was realized in that the Respondent did not expend funds to purchase the proper equipment and supplies or employ a qualified asbestos contractor to remove and or encapsulate the asbestos. By not properly controlling the work area, not wetting the asbestos during removal, not informing the Department of the asbestos removal, not employing personnel trained in asbestos removal, by not removing the asbestos before renovation, by not properly containerizing the asbestos and by not encapsulating the remaining asbestos the

Respondent realized a monetary benefit. By not employing the requirements for the proper removal of RACM, the Respondent reduced the expenses and the time required to complete the job which saved money.

6. The degree of risk to human health or property:

Asbestos if handled improperly could be hazardous to the public health.

As stated in the Louisiana State University Asbestos Training Course Student Manual, improper handling of asbestos could cause the following diseases:

1. Asbestosis - the fibrotic scarring of the lungs;
2. Lung Cancer;
3. Mesothelioma - cancer of the chest cavity lining (pleural mesothelioma) and/or the abdominal cavity (peritoneal mesothelioma). This cancer spreads very rapidly and is always fatal; and
4. Cancer of the esophagus, colon, and pancreas, pleural plaques, pleural thickening, and pleural effusion.

Based on a thorough review of the health effects literature, EPA concluded that there is no level of exposure below which the risks of contracting an asbestos related disease are not zero (i.e. there is no threshold level of exposure). If there is no safe level of exposure to asbestos, the Department is responsible for instituting measures to control or eliminate exposure.

Any emission of a hazardous air pollutant from activities such as the dry removal of asbestos and failure to control the work area to prevent an emission of asbestos, presents a high risk to public health.

7. Reporting-Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the department and whether the violation or noncompliance was concealed or there was an attempt to conceal:

The violations were not reported by the Respondent, but revealed during unannounced inspections on or about May 28, 1996, June 7, 1996, June 26, 1996 and October 22, 1996 at the Plaza Towers site located at 1001 Howard Avenue, New Orleans, Louisiana.

On or about July 1, 1996, an Emergency Cease and Desist Order (No. AE-O-96-0097) was hand delivered to the Respondent and a subsequent visit to the Plaza Tower site on October 22, 1996, revealed that the Respondent had violated the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.F.3.a.

8. Mitigation of damages-Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation:

No mitigating circumstances have been determined in this matter.

9. Enforcement Cost-The costs of bringing and prosecuting an enforcement action:

This case required State expenditures of more than 118 manhours and necessary materials at a cost of approximately \$2065.00

Regulations cited:

1. LAC 33:III.5151.F.2.a,
2. LAC 33:III.5151.F.3.a,
3. LAC 33:III.5151.F.3.c,
4. LAC 33:III.5151.F.3.fi,
5. LAC 33:III.5151.F.3.h and
6. LAC 33:III.5151.J.2.a
7. Section 2057 (A) (2) of the Act

After careful consideration of all the above stated factors, AQD recommends that BAHAR Development, Inc., BAHA Towers Limited Partnership, Schumann Rafizadeh and Madonna Rafizadeh be charged with a penalty in the amount of \$50,000.00.

AE-P-97-004

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return the card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- 1. ☐ Addressee's Address
 - 2. ☐ Restricted Delivery
- Consult postmaster for fee.

3. Article Addressed to:

BATHAR Development, Inc.

TIAFSOP

11 William Stair

Capella Day Farm, Site

345 North Lawrence Rd, 702

Metairie, LA 70002

4a. Article Number

2447966624

4b. Service Type:

- ☐ Registered ☐ Certified
- ☐ Express Mail ☐ Insured
- ☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

4-11-97

8. Addressee's Address (Only if requested and fee is paid)

6. Signature: (Addressee or Agent)

X Kella Smith

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.



State of Louisiana
Department of Environmental Quality



M.J. "MIKE" FOSTER, JR.
GOVERNOR

July 6, 1998

J. DALE GIVENS
SECRETARY

CERTIFIED MAIL-RETURN RECEIPT REQUESTED Z 441 766 958

BAHAR Development, Inc.
BAHA Towers Limited Partnership,
Schumann Rafizadeh and Madonna Rafizadeh
Through Its Agent For
Service of Process
J. William Starr
Capella Law Firm
3445 North Causeway Boulevard, Suite 702
Metairie, Louisiana 70002

2140-85889-005

Dear Sir:

Enclosed please find an **AMENDED PENALTY ASSESSMENT** from the State of Louisiana, Department of Environmental Quality, to BAHAR Development, Inc., BAHA Towers Limited Partnership, Schumann Rafizadeh and Madonna Rafizadeh, located at 1001 Howard Avenue, New Orleans, Orleans Parish, Louisiana.

The **AMENDED PENALTY ASSESSMENT** is self-explanatory.

Sincerely,

Gustave Von Bodungen, P.E.
Assistant Secretary

GVV:TP

Enclosure

c: Ms. Sheyda N. Chaney
Executive Vice President
BAHAR Development, Inc.
1001 Howard Avenue
New Orleans, Louisiana 70113

EXHIBIT

B



BAHAR Development, Inc.
Page two

Ms. Myrna Edwards
Administrative Director
State of Louisiana Division of Administration
Facility Planning and Control
Post Office Box 94095
Baton Rouge, Louisiana 70804-9095

Southeast Regional Office

William Coltrin

fl:baha.pn

STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF AIR QUALITY AND RADIATION PROTECTION
AIR QUALITY DIVISION

IN THE MATTER OF

BAHAR DEVELOPMENT, INC.
BAHA TOWERS LIMITED PARTNERSHIP
SCHUMANN RAFIZADEH AND
MADONNA RAFIZADEH
ORLEANS PARISH
NEW ORLEANS, LOUISIANA 70113

PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT,
La. R.S. 30:2001, et seq.

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ENFORCEMENT TRACKING NO:
AE-P-97-0041A

AMENDED PENALTY ASSESSMENT

The Louisiana Department of Environmental Quality (the Department) hereby amends the Penalty Assessment AE-P-97-0041 issued April 2, 1997, to BAHAR Development, Inc., Baha Towers Limited Partnership, Schumann Rafizadeh and Madonna Rafizadeh (Respondent) in the above captioned matter as follows:

A.

The Department hereby amends the FINDINGS OF FACT to read as follows:

IV.

On or about June 26, 1996, an investigation was conducted by members of the Department at Respondent's facility, The Plaza Tower, located at or near 1001 Howard Avenue,

New Orleans, Louisiana. The inspection on the 11th floor revealed that small piles of construction debris were found throughout the work area. Pieces of fireproofing identified as asbestos containing material were in the piles. A sample was taken from the debris on the 11th floor and found to be positive for asbestos. The inspection on the 15th floor revealed significant asbestos contamination of the area. A sample was taken from this area and found to be positive for asbestos. The owner of the renovation activity failed to remove all RACM from the facility being renovated before any activity begins that would break up, dislodge, or similarly disturb the material. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.F.3.a and Section 2057(A)(2) of the Act.

V.

During the inspection of the 11th floor on or about June 26, 1996, the inspectors observed holes drilled in the concrete ceiling for hangers to support the sprinkler system piping. The holes were in the areas of fireproofing overspray and were of the type usually drilled with a hammer drill. Using a hammer drill causes significant vibration, which causes asbestos containing building material (ACBM) to be disturbed. During the inspection of the 15th floor, the inspectors observed pieces of dislodged ACBM around several pipes, which had been left on the floor.

VI.

During the inspection of the 11th and 15th floors on or about June 26, 1996, the Department's inspectors observed the pieces of fireproofing identified as asbestos containing material in piles were dry and had not been adequately wet prior to and during the stripping operation. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.F.3.c and Section 2057(A)(2) of the Act.

VII.

The inspection of the 11th and 15th floors on or about June 26, 1996, revealed that pieces of fireproofing, identified as asbestos containing material in piles were not sealed in leak-tight, clear, transparent containers. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.J.1.a.iii and Section 2057(A)(2) of the Act.

VIII.

During the course of the inspection of the 11th and 15th floors on or about June 26, 1996, the Department's inspectors discovered that the owner of the renovation activity failed to provide the administrative authority with typed notice of intention to renovate. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.F.2.a and Section 2057(A)(2) of the Act.

IX.

On or about July 1, 1996, an **EMERGENCY CEASE AND DESIST ORDER** was issued to the Respondent which included the following violations:

1. June 26, 1996, for failing to remove all RACM from the facility before beginning any activity that would disturb the material or preclude access to the material for subsequent removal on the 11th floor in violation of LAC 33:III.5151.F.3.a.

Investigation revealed that piles of construction debris containing asbestos fireproofing were identified throughout the work area. Holes had been drilled into the concrete ceiling covered by asbestos fireproofing to attach hangers to support the sprinkler system piping.

2. June 26, 1996, for failing to adequately wet and control asbestos emissions during removal in violation of LAC 33:III.5151.F.3.c. The construction debris piles contained dry RACM. The air-conditioning system was on and workers were seen leaving the 11th floor and getting on the elevators that serve the building occupants. No decontamination system was observed and passive air monitoring samples on this floor were as high as 57.7s/mm2 using TEM methods.
3. June 26, 1996, after the RACM was removed, for failing to adequately wet the material and ensure that it remained wet until collected and contained or treated in preparation for disposal in violation of LAC 33:III.5151.F.3.f.i.
4. June 26, 1996, for failing to wet and seal all ACM in leak-tight, clear, transparent containers while wet, in violation of LAC 33:III.5151.J.1.a.iii.
5. June 26, 1996, for failing to submit to the Department a notice of intention to demolish or renovate, before removing RACM in Violation of LAC 33:III.5151.F.2.a.
6. Respondent was advised to discontinue asbestos abatement activities until compliance with the asbestos regulations was achieved. Respondent was ordered to immediately cease and desist operations that strip, remove, dislodge, cut, drill, or otherwise handle or disturb asbestos at the facility.

X.

As a result of a meeting held on or about July 11, 1996, with representatives of the Department and the Respondent to address the violations noted in the Emergency Cease and Desist Order, Respondent was authorized to conduct those activities stipulated in Section I of the

Order. This authorization served to terminate the Order and was fully contingent upon strict compliance with the applicable provisions of LAC 33:III.5151 and Chapter 27 of the Louisiana Air Quality Regulations.

XI.

On or about August 13, 1996, a Notice of Violation and Potential Penalty (NOVPP), AE-N-96-0121, was issued to Respondent and included the following violations:

1. LAC 33:III.5151.F.2.a
2. LAC 33:III.5151.F.3.a
3. LAC 33:III.5151.F.3.c
6. LAC 33:III.5151.J.1.a.iii

XII.

On or about September 9, 1996, an enforcement meeting was held with representatives of the Department and Respondent. The purpose of the meeting was to discuss the NOVPP (AE-N-96-0121) issued to Respondent on or about August 13, 1996. During the meeting, Respondent was requested to submit to the Department a list of all contractors used by Respondent as well as the gross revenues generated for 1995. A written response was also requested to address all points of the NOVPP. The requested information was to be submitted to the Department by October 4, 1996.

XIII.

On or about October 4, 1996, Respondent submitted to the Department a written response to the NOVPP (AE-N-96-0121) dated August 13, 1996. Information requested for the gross

revenues for 1995 as well as the list of contractors used on Respondent's facility located at or near 1001 Howard Avenue, New Orleans, Louisiana was not submitted as requested in the enforcement meeting held on or about September 9, 1996.

XIV.

A civil penalty under Section 205 (E) and 2050.3 of the Act may be assessed for the violations described herein.

XV.

Having considered the factors set forth in Section 205 (E)(3) of the Act, and in light of all facts and circumstances presently known, a civil penalty would be appropriate, equitable and justified.

XVI.

Paragraphs XV through XX are hereby deleted from the Findings of Fact of the original **PENALTY ASSESSMENT.**

B.

The Department hereby amends the **ASSESSMENT** to read as follows:

I.

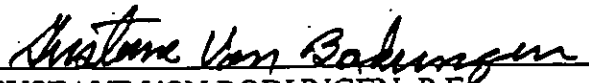
A penalty in the amount of \$20,000.00 is hereby assessed, together with legal interest as allowed by law and all costs of bringing and prosecuting this enforcement action.

C.

The Department incorporates all of the remainder of the original Penalty Assessment, AE-P-97-0041, as if reiterated herein.

This AMENDED PENALTY ASSESSMENT is effective upon receipt.

Baton Rouge, Louisiana this 6th day of JULY, 1998.


GUSTAVE VON BODUNGEN, P.E.
ASSISTANT SECRETARY
DEPARTMENT OF ENVIRONMENTAL QUALITY

Please serve Respondent through
its agent for service of process:

J. William Starr
Capella Law Firm
3445 North Causeway Boulevard, Suite 702
Metairie, Louisiana 70002

Copies of a request for hearing
and/or related correspondence
should be sent to:

B. J. Pritchard
Air Quality Division
P. O. Box 82135
Baton Rouge, LA 70884

PENALTY ASSESSMENT FORM

Respondent Bahar Development, Inc. Plaza Towers
1001 Howard Avenue
New Orleans, Orleans Parish, Louisiana

The following check list shall be considered in assessing a penalty in accordance with R.S. 30:2025 E of the Environmental Quality Act.

Describe the Violation(s):

A complaint investigation conducted on or about June 26, 1996, revealed the following violations:

- (a) Respondent failed to provide the administrative authority with a typed notice of intention to renovate. This is a violation of LAC 33:III.5151.F.2.a and Section 2057 (A) (2) of the Act.
- (b) Respondent failed to remove all of the Regulated Asbestos Containing Material (RACM) from the facility being renovated before any activity begins that would break up, dislodge, or similarly disturb the material. This is a violation of LAC 33:III.5151.F.3.a and Section 2057 (A) (2) of the Act.
- (c) Respondent failed to adequately wet the RACM prior to and during stripping operation and the work area was not controlled to prevent the release of asbestos containing material to the outside air. This is a violation of LAC 33:III.5151.F.3.c and Section 2057 (A)(2) of the Act.
- (d) Respondent failed to seal all asbestos-containing waste material in leak-tight, clear, transparent containers. This is a violation of LAC 33:III.5151.J.1.a.iii and Section 2057(A)(2) of the Act.

1. The history of previous violations or repeated noncompliance:

Emergency Cease and Desist Order - July 1, 1996

Notice of Violation and Potential Penalty - August 13, 1996, included the following violations

- (a) LAC 33:III.5151.F.2.a
- (b) LAC 33:III.5151.F.3.a
- (c) LAC 33:III.5151.F.3.c
- (e) LAC 33:III.5151.J.1.a.iii

2. The nature and gravity of the violation:

Asbestos has been proven to be harmful and sometimes fatal if inhaled or ingested. The manner in which the renovation/demolition was conducted at the site could have resulted in the release of asbestos fibers to the atmosphere where they could be inhaled or ingested.

Regulations concerning the proper removal and storage of asbestos-containing materials are available and these regulations were discussed with Respondent's staff on numerous occasions with discussions ensuing about asbestos regulations, management plans, air sampling and procedures that must be taken when disturbing and removing the asbestos material. The inspectors also explained to Respondent's staff that a qualified and certified company representative must be utilized when handling the asbestos containing material. Based on the inspector's discussions with the Respondent during the inspections, the Respondent was aware of the regulations and the necessity of complying with the regulations to protect the public. During the inspections, the inspectors emphasized to the Respondent the importance of complying with the Louisiana Air Quality Regulations, in particular LAC 33:III.5151 and Chapter 27.

3. The gross revenues generated by the respondent:

In an income and expense statement from Respondent dated October 31, 1996, Respondent's income was stated for year to date (YTD) as \$1,345,183.90.

4. The degree of culpability, recalcitrance, defiance or indifference to regulations or orders:

The Respondent owns and is renovating a building known as the Plaza Tower, 1001 Howard Avenue, New Orleans, Louisiana. Baha Towers, Limited Partnership has financial resources available to insure compliance with the regulations. The Respondent was made aware of the Louisiana Air Quality Regulations governing the handling of asbestos by the Department's inspector, on or about February 6, 1996, March 5, 1996 and June 26, 1996 during inspections at the Plaza Towers site. Respondent was also given an Environmental Study and Maintenance & Operation Plan by the previous owner of the building which identified the asbestos locations in the Plaza Tower.

Respondent was requested during an enforcement meeting with Respondent and representatives of the Department on or about September 9, 1996, to provide the Department with a list of contractors and their contact person utilized by the Respondent on the renovation of Plaza Towers and for the gross revenues for 1995. The information was not received. The Department wrote a letter to Respondent on or about October 17, 1996, again requesting the above information. The information was not received. On or about December 16, 1996, a representative of the Department had a telephone conversation with Ms. Shedy Chaney, Executive Vice President of BAHAR Development regarding the information requested in the enforcement meeting and the letter of October 17, 1996. Ms. Chaney agreed to Fax the

information to the Department within the 1/2 hour. On or about December 17, 1996, about 12:00 PM, the requested information was received by the Department by FAX. Ms. Chaney represented that the gross revenue information she sent to the Department was of both Bahar Development, Inc., and its affiliate Baha Towers Limited Partnership.

An inspection at the Plaza Towers on or about June 26, 1996, revealed the following regulations were violated:

1. Small piles of construction debris were throughout the work area and pieces of fireproofing identified as asbestos containing material were identified in piles, in violation of LAC 33:III.5151.F.3.a.
2. The construction debris was dry and had not been adequately wet prior to and during stripping operations, in violation of LAC 33:III.5151.F.3.c.
3. The owner of the renovation activity failed to provide the administrative authority with typed intention to renovate, in violation of LAC 33:III.5151.F.2.a.
4. The asbestos containing material identified in piles was not contained in leak-tight, transparent containers, in violation of LAC 33:III.5151.J.1.a.iii.

5. The monetary benefits realized through noncompliance:

A monetary benefit was realized in that the Respondent did not expend funds to purchase the proper equipment and supplies or employ a qualified asbestos contractor to remove and or encapsulate the asbestos. By not properly controlling the work area, not wetting the asbestos during removal, not informing the Department of the asbestos removal, not employing personnel trained in asbestos removal, by not removing the asbestos before renovation, by not properly containerizing the asbestos and by not encapsulating the remaining asbestos the Respondent realized a monetary benefit. By not employing the requirements for the proper removal of RACM, the Respondent reduced the expenses and the time required to complete the job which saved money.

6. The degree of risk to human health or property:

Asbestos if handled improperly could be hazardous to the public health.

As stated in the Louisiana State University Asbestos Training Course Student Manual, improper handling of asbestos could cause the following diseases:

1. Asbestosis - the fibrotic scarring of the lungs;
2. Lung Cancer;
3. Mesothelioma - cancer of the chest cavity lining (pleural mesothelioma) and/or the abdominal cavity (peritoneal mesothelioma). This cancer spreads very rapidly and is always fatal; and
4. Cancer of the esophagus, colon, and pancreas, pleural plaques, pleural

4. Cancer of the esophagus, colon, and pancreas, pleural plaques, pleural thickening, and pleural effusion.

Based on a thorough review of the health effects literature, EPA concluded that there is no level of exposure below which the risks of contracting an asbestos related disease are not zero (i.e. there is no threshold level of exposure). If there is no safe level of exposure to asbestos, the Department is responsible for instituting measures to control or eliminate exposure.

Any emission of a hazardous air pollutant from activities such as the dry removal of asbestos and failure to control the work area to prevent an emission of asbestos presents a high risk to public health.

7. Reporting-Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the department and whether the violation or noncompliance was concealed or there was an attempt to conceal:

The violations were not reported by the Respondent, but revealed during an unannounced inspection on or about June 26, 1996 at the Plaza Towers site located at 1001 Howard Avenue, New Orleans, Louisiana.

8. Mitigation of damages-Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation:

No mitigating circumstances have been found in this matter.

9. Enforcement Cost-The costs of bringing and prosecuting an enforcement action:

This case required State expenditures of more than 160 manhours and necessary materials at a cost of approximately \$2800.00

Regulations cited:

1. LAC 33:III.5151.F.2.a,
2. LAC 33:III.5151.F.3.a,
3. LAC 33:III.5151.F.3.c,
4. LAC 33:III.5151.J.1.a.iii,
5. Section 2057 (A) (2) of the Act

After careful consideration of all the above stated factors, AQD recommends that BAHAR Development, Inc., BAHAR Towers Limited Partnership, Schumann Rafizadeh and Madonna Rafizadeh be charged with a penalty in the amount of \$20,000.00.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

9-97-0041A

I also wish to receive the following services (for an extra fee):

- ☐ Addressee's Address
 - ☐ Restricted Delivery
- Consult postmaster for fee.

3. Article Addressed to:

BAHAR Development, Inc.
TIASP
J. William Starr
3445 N. Causeway Boulevard,
Suite 702

Metairie, Louisiana 70002

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

X

PS Form 3811, December 1994

4a. Article Number

Z 441 766 958

4b. Service Type

- ☐ Registered
- ☐ Express Mail
- ☐ Return Receipt for Merchandise
- ☒ Certified
- ☐ Insured
- ☐ COD

7. Date of Delivery

7-9-98

8. Addressee's Address (Only if requested and fee is paid)

Domestic Return Receipt

Thank you for using Return Receipt Service.



State of Louisiana
Department of Environmental Quality



M.J. "MIKE" FOSTER, JR.
GOVERNOR

October 9, 1998

J. DALE GIVENS
SECRETARY

CERTIFIED MAIL - P583 238 627
RETURN RECEIPT REQUESTED

MBA Services, L.L.C.
Through Its Agent For
Service of Process
Mr. J. William Starr
3445 N. Causeway Blvd.
Suite 1001
Metairie, Louisiana 70002

RE: NOTICE OF VIOLATION
AND POTENTIAL PENALTY
ORLEANS PARISH
TRACKING #AE-NP-98-0200

Dear Sir:

On or about April 27, 1998, an inspection of the Plaza Tower, owned and/or operated by Bahar Development, Inc., was performed to determine the degree of compliance with the Louisiana Environmental Quality Act and Regulations. MBA Services (Respondent) was the operator of an asbestos abatement project at the Plaza Tower. The facility is located at 1001 Howard Avenue, New Orleans, Louisiana.

While the Department's investigation is not yet complete, the following violations were noted:

1. LAC 33:III.5151.F.2.a. in that the Respondent did not submit a Form AAC-2, Notice of Demolition and Renovation.
2. LAC 33:III.5151.F.3.a. in that regulated asbestos containing materials (RACM) were not removed before an activity began that would break up, dislodge, or similarly disturb the material.

EXHIBIT

tabbier

C



OFFICE OF AIR QUALITY P.O. BOX 82135 BATON ROUGE, LOUISIANA 70884-2135

AN EQUAL OPPORTUNITY EMPLOYER



Plaza Tower
Notice of Violation and Potential Penalty
Page 2

3. LAC 33:III.5151.F.3.f.i. in that the RACM was not adequately wet and ensured that it remained wet until collected and contained or treated in preparation for disposal.
4. LAC 33:III.5151.J.1.a.iii. in that the RACM was not sealed in a leaktight container.
5. LAC 33:III.5151.J.1.a.vi. in that the RACM was not stored in a labeled, secured area where it would not be subjected to disturbance or tampering.
6. LAC 33:III.5151.J.1.a.iv. in that bags of RACM were not labeled, using a label as specified by OSHA.

Prior to the issuance of any additional appropriate enforcement action(s) for the violations indicated above, you are requested to attend an enforcement conference to present any mitigating circumstances concerning the violations. It is requested that you contact Mr. B. J. Pritchard, Enforcement Program Manager, at 504-765-0186 within ten (10) days after receiving this document in order to schedule this conference.

Pursuant to La. R.S. 30:2050.3(B), you are hereby notified that the issuance of a penalty assessment is being considered for the violations described herein. Written comments may be filed regarding the violations and the contemplated penalty. You may elect to submit written comments after the enforcement conference is held.

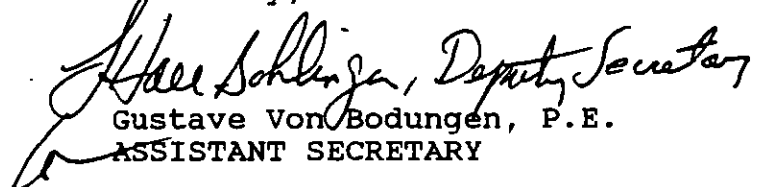
The Department is required by La. R.S. 30:2025(E)(3)(a)(iii) to consider the gross revenues of the respondent in order to determine whether a penalty will be assessed and the amount of such penalty. Please forward a record of the gross revenues to the above-named contact person. You may also elect to submit this gross revenue statement after the enforcement conference is held.

Plaza Tower
Notice of Violation and Potential Penalty
Page 3

Further enforcement action may be taken if compliance is not promptly achieved. For each violation described herein, the Department reserves the right to seek civil penalties and the right to seek compliance with its rules and regulations in any manner allowed by law, and nothing herein shall be construed to preclude the right to seek such penalties and compliance.

In order to reduce document handling time, please refer to the tracking number on the front of this document on all correspondence in response to this action.

Sincerely,


Gustave Von Bodungen, P.E.
ASSISTANT SECRETARY

GVB:mtd

c: Southeast Regional Office

Michael P. Algero, Sr., Surveillance Program Manager

William Coltrin, Asbestos/Lead Program Manager

Mr. Ben Erfany, Senior Vice-President of Operations
MBA Services, L.L.C.
800 East Commerce Road, Suite 2301
Harahan, Louisiana 70123

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

• Complete items 1 and/or 2 for additional services.

• Complete items 3, 4a, and 4b.

• Print your name and address on the reverse of this form so that we can return this card to you.

• Attach this form to the front of the mailpiece, or on the back if space does not permit.

• Write "Return Receipt Requested" on the mailpiece below the article number.

• The Return Receipt will show to whom the article was delivered and the date delivered.

NP-01200

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address

2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

MBA Services, L.L.C.

Through Its Agent For

Service of Process

Mr. J. William Starr

3445 N. Causeway Blvd.

Suite 1001

Metairie, LA 70002

5. Received By: (Print Name)

4a. Article Number

583 238 627

4b. Service Type

☐ Registered

☐ Express Mail

☐ Return Receipt for Merchandise

☐ COD

7. Date of Delivery

10/10/98

8. Addressee's Address (Only if requested and fee is paid)

6. Signature: (Addressee or Agent)

X Kristin Tidwell

PS Form 3811, December 1994

102595-97-B-0179

Domestic Return Receipt

Thank you for using Return Receipt Service.



State of Louisiana
Department of Environmental Quality



M.J. "MIKE" FOSTER, JR.
GOVERNOR

December 11, 1998

J. DALE GIVENS
SECRETARY

CERTIFIED MAIL-RETURN RECEIPT REQUESTED Z 441 766 979

BAHAR Development, Inc.
BAHA Towers Limited Partnership,
Schumann Rafizadeh and Madonna Rafizadeh
Through Its Agent For
Service of Process
J. William Starr
Capella Law Firm
3445 North Causeway Boulevard, Suite 702
Metairie, Louisiana 70002

RECEIVED

DEC 14 1998

LA. DEPARTMENT OF
ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

Dear Sir:

Enclosed please find a **PENALTY ASSESSMENT** from the State of Louisiana, Department of Environmental Quality, to BAHAR Development, Inc., BAHA Towers Limited Partnership, Schumann Rafizadeh and Madonna Rafizadeh, located at 1001 Howard Avenue, New Orleans, Orleans Parish, Louisiana.

The **PENALTY ASSESSMENT** is self-explanatory.

Sincerely,

Gustave Von Bodungen, P.E.

Gustave Von Bodungen, P.E.
Assistant Secretary

GVB:TP

Enclosure

c: Ms. Sheyda N. Chaney
Executive Vice President
BAHAR Development, Inc.
1001 Howard Avenue
New Orleans, Louisiana 70113

EXHIBIT

D



recycled paper

OFFICE OF AIR QUALITY P O BOX 82135 BATON ROUGE, LOUISIANA 70884-2135

AN EQUAL OPPORTUNITY EMPLOYER



BAHAR Development, Inc.
Page two

Ms. Myma Edwards
Administrative Director
State of Louisiana Division of Administration
Facility Planning and Control
Post Office Box 94095
Baton Rouge, Louisiana 70804-9095

Southeast Regional Office

✓ **William Coltrin**

fl:baha-2.pn

STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF AIR QUALITY AND RADIATION PROTECTION
AIR QUALITY DIVISION

IN THE MATTER OF

BAHAR DEVELOPMENT, INC.
BAHA TOWERS LIMITED PARTNERSHIP
SCHUMANN RAFIZADEH AND
MADONNA RAFIZADEH
ORLEANS PARISH
NEW ORLEANS, LOUISIANA 70113

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ENFORCEMENT TRACKING NO:

AE-P-98-0257

PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT,
La. R.S. 30:2001, et seq.

PENALTY ASSESSMENT

The following **PENALTY ASSESSMENT** is issued to BAHAR Development, Inc.,
BAHA Towers Limited Partnership, Schumann Rafizadeh and Madonna Rafizadeh (Respondent)
by the Louisiana Department of Environmental Quality (the Department), under the authority
granted by the Louisiana Environmental Quality Act (the Act), La. R.S. 30:2001, et seq. and
particularly by La. R.S. 30:2025 (E) and 2050.3.

FINDINGS OF FACT

I.

Respondent owns and is renovating a building known as the Plaza Tower, located at or
near 1001 Howard Avenue, New Orleans, Orleans Parish, Louisiana.

II.

On or about April 27, 1998, the Air Quality Division received a complaint concerning the 14th, 15th and the 27th floors of Respondent's facility, Plaza Towers, located at or near 1001 Howard Avenue, New Orleans, Louisiana. The nature of the complaint was that holes were being drilled in the floor and asbestos was falling around workers. On or about April 27, 1998, representatives of the Department conducted an inspection of the Plaza Tower to determine the degree of compliance with the Louisiana Environmental Quality Act and Regulations. The inspectors proceeded to the 15th floor, showed identification to an employee of BAHA Towers and after a meeting with an employee of MBA Services, began the inspection on the 15th floor.

III.

During the inspection of the 15th floor on or about April 27, 1998, the inspectors inspected a room where a transformer was located. In the room, the inspectors observed three holes approximately four inches in diameter, which had been drilled in the floor. A sample of suspect material was collected from this area and found to be positive for asbestos. During the sampling, the inspector noticed that the sampled material was soft and could easily be pulverized with finger pressure. The inspectors noted that the sampled material was homogeneous with the blown on fireproofing located throughout the building.

IV.

The inspectors proceeded to the 14th floor. Two small rooms were inspected, one directly under the three drilled holes observed in the floor on the 15th floor. A chunk of fireproofing material was found on the top plate of a divider wall near the three drilled holes. The fireproofing is homogeneous throughout the 14th floor, which according to the Plaza Tower Asbestos

Management Plan is positive for asbestos. The asbestos containing materials (ACM) found at this point of the investigation are a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.F.3.a in that regulated asbestos containing materials (RACM) were not removed before an activity began that would break up, dislodge, or similarly disturb the material. This also constitutes a violation of Section 2057 (A)(2) of the Act

V.

The inspectors then proceeded to the 27th floor. During the inspection of the 27th floor, an employee of MBA Services pointed out to DEQ inspectors, as an example area, black spray painted areas that the sprinkler contractor had designated as fireproofing removal areas where the fireproofing was to be removed to allow for the attachment of hanger clips to steel beams. The employee stated that after work hours, he alone would build a small containment of poly around the painted area and do the removal on various floors of the building. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.F.2.a in that the facility did not submit a Form AAC-2, Notice of Demolition and Renovation. This also constitutes a violation of Section 2057 (A)(2) of the Act.

VI.

During the inspection of the 27th floor, the employee of MBA services stated that the material from the asbestos removal from the various floors was stored in an office on the mezzanine level of the building. The bag containing the waste material could not be located in the office but was located in an adjoining room. The bag was not stored in a labeled, secured area. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.J.1.a.vi

in that the RACM was not stored in a labeled, secured area where it would not be subjected to disturbance or tampering. This also constitutes a violation of Section 2057 (A)(2) of the Act.

VII.

During the inspection of the bag on the mezzanine level of the building, an employee of MBA stated to the inspectors that this is the one bag in use to contain the asbestos waste from the removal of the fireproofing in areas that require hanger clips to be attached to the steel beam. A close examination of the bag revealed that there were several small holes in the skin of the bag. This a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.J.1.a.iii in that the RACM was not sealed in a leak tight container. This also constitutes a violation of Section 2057(A)(2) of the Act.

VIII.

Further investigation of the bag on the mezzanine level of the building noted the bag had no evidence of labeling. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.J.1.a.iv in that bags which contain RACM were not labeled, using a label as specified by OSHA. This also constitutes a violation of Section 2057(A)(2) of the Act.

IX.

An examination of the bag revealed no evidence of containment polyethylene in the bag nor was there any evidence of moisture, droplets or condensation on the interior of the bag. There was no evidence of the material being treated with a non-white pigmented encapsulate. The fireproofing material contained in the bag was homogenous to previously sampled material and moved about the bag freely, not sticking to the bag or any other materials in the bag. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.F.3.f.i in that the

RACM was not adequately wet to ensure that it remains wet until collected and contained or treated in preparation for disposal. This also constitutes a violation of Section 2057(A)(2) of the Act.

X.

On or about August 19, 1998, a Notice of Violation and Potential Penalty (NOVPP), No. AE-NP-98-0161, was issued to Respondent for the following violations:

1. LAC 33:III.5151.F.2.a,
2. LAC 33:III.5151.F.3.a,
3. LAC 33:III.5151.F.3.f.i,
4. LAC 33:III.5151.J.1.a.iii,
5. LAC 33:III.5151.J.1.a.vi and
6. LAC 33:III.5151.J.1.a.iv.

XI.

On or about September 15, 1998, an enforcement meeting was held with representatives of the Department and Respondent. The purpose of the meeting was to discuss the NOVPP (No. AE-NP-98-0161) issued to Respondent on or about August 19, 1998. During the meeting, Respondent presented information pertaining to the cited violations in the NOVPP and also submitted documentation represented as gross revenue information in the form of Schedule K-1 (Partner's share of Income, Credits, Deductions, etc.). A Representative of the Department, after a review of the gross revenue information documents presented to the Department by the Respondent, requested additional information from the company. A written response was also requested to address all points of the NOVPP. The requested information was to be submitted to the Department by October 2, 1998. On or about September 29, 1998, Respondent submitted a written response to the NOVPP (No. AE-NP-98-0161).

XII.

A civil penalty under Section 2025 (E) and 2050.3 of the Act may be assessed for the violations described herein.

XIII.

Having considered the factors set forth in Section 2025 (E)(3) of the Act, and in light of all facts and circumstances presently known, a civil penalty would be appropriate, equitable and justified.

ASSESSMENT

I.

A penalty in the amount of \$120,000.00 is hereby assessed, together with legal interest as allowed by law and all costs of bringing and prosecuting this enforcement action.

II.

The Respondent has a right to an adjudicatory hearing on a disputed issue of material fact or of law arising from this **PENALTY ASSESSMENT**. This right may be exercised by filing a written request with the secretary no later than thirty (30) days after receipt of this **PENALTY ASSESSMENT**.

III.

The request for adjudicatory hearing shall specify the provisions of the **PENALTY ASSESSMENT** on which the hearing is requested and shall briefly describe the basis for the request. This request should reference the number which is located in the upper right hand corner of the first page of this document and should be directed to the following:

Louisiana Department of Environmental Quality
Office of Legal Affairs and Enforcement
Attention: Barry Brooks
Post Office Box 82282
Baton Rouge, Louisiana 70884-2282

IV.

Upon Respondent's timely filing a request for a hearing, a hearing on the disputed issue of material fact or of law regarding this **PENALTY ASSESSMENT** may be scheduled by the Secretary of the Department. The hearing shall be governed by the Act, the Administrative Procedure Act (La. R.S. 49:950, et seq.), and the Department's Rules of Procedure. The Department may amend or supplement this **PENALTY ASSESSMENT** prior to the hearing, after providing sufficient notice and an opportunity for the preparation of a defense for the hearing.

V.

This **PENALTY ASSESSMENT** shall become a final enforcement action unless the request for hearing is timely filed. Failure to timely request a hearing constitutes a waiver of Respondent's right to a hearing on a disputed issue of material fact or of law under Section 2050.4 of the Act for the violations described herein and the assessed penalty.

VI.

The Respondent must make full payment of the civil penalty assessed herein no later than fifteen (15) days after the assessment becomes final. Penalties are to be made payable to the Department of Environmental Quality and mailed to:

Darryl Serio
Department of Environmental Quality
Office of Management and Finance
P.O. Box 82231
Baton Rouge, Louisiana 70884-2231

VII.

Upon the penalty assessed herein becoming final because of Respondent's failure to timely file a request for a hearing, and upon Respondent's failure to pay the civil penalty provided herein or failure to make arrangements satisfactory to the Department for such payment, this matter shall be referred to the Attorney General for collection of the penalty plus all costs associated with the collection.


VIII.

For each violation described herein, the Department reserves the right to seek compliance with its rules and regulations in any manner allowed by law and nothing herein shall be construed to preclude the right to seek such compliance.

IX.

This ORDER is effective upon receipt.

Baton Rouge, Louisiana this 11th day of December, 1998.


GUSTAVE VON BODUNGEN, P.E.
ASSISTANT SECRETARY
DEPARTMENT OF ENVIRONMENTAL QUALITY

**Please serve Respondent through
its agent for service of process:**

**J. William Starr
Capella Law Firm
3445 North Causeway Boulevard, Suite 702
Metairie, Louisiana 70002**

**Copies of a request for hearing
and/or related correspondence
should be sent to:**

**B. J. Pritchard
Air Quality Division
P. O. Box 82135
Baton Rouge, LA 70884**

PENALTY ASSESSMENT FORM

Respondent Bahar Development, Inc. Plaza Towers
1001 Howard Avenue
New Orleans, Orleans Parish, Louisiana

The following check list shall be considered in assessing a penalty in accordance with R.S. 30:2025 E of the Environmental Quality Act.

Describe the Violation(s):

A complaint investigation conducted on or about April 27, 1998, revealed the following violations:

- (a) Respondent failed to remove regulated asbestos containing material (RACM) before an activity began that would break up, dislodge, or similarly disturb the material. This is a violation of LAC 33:III.5151.F.3.a and Section 2057 (A) (2) of the Act.
- (b) Respondent failed to submit a Form AAC-2, Notice of Demolition and Renovation. This is a violation of LAC 33:III.5151.F.2.a and Section 2057 (A) (2) of the Act.
- (c) Respondent failed to seal all asbestos-containing waste material in a leak-tight container. This is a violation of LAC 33:III.5151.J.1.a.iii and Section 2057(A)(2) of the Act.
- (d) Respondent failed to store the RACM in a labeled, secured area where it would not be subjected to disturbance or tampering. This is a violation of LAC 33:III.5151.J.1.a.vi and Section 2057 (A)(2) of the Act.
- (e) Respondent stored RACM in bags that were not labeled, using a label as specified by OSHA. This is a violation of LAC 33:III.5151.J.1.a.iv and Section 2057 (A)(2) of the Act.
- (f) Respondent failed to adequately wet the RACM and ensure that it remained wet until collected and contained or treated in preparation for disposal. This is a violation of LAC 33:III.5151.F.3.f.i and Section 2057 (A)(2) of the Act.

1. The history of previous violations or repeated noncompliance:

Emergency Cease and Desist Order - July 1, 1996

Termination of the Emergency Cease and Desist Order - July 11, 1996. The Order was terminated contingent on Respondent's agreement to comply with the plan designed to address the violations cited in the Order. The plan was presented to the Air Quality Division in a meeting held on July 11, 1996.

Notice of Violation and Potential Penalty - August 13, 1996, included the following violations:

- (a) LAC 33:III.5151.F.2.a,
- (b) LAC 33:III.5151.F.3.a,
- (c) LAC 33:III.5151.F.3.c,
- (d) LAC 33:III.5151.F.3.f.i,
- (e) LAC 33:III.5151.J.1.a.iii,
- (f) LAC 33:III.5151.F.3.h,
- (g) LAC 33:III.5151.J.2.a and
- (h) Section 2057 (A)(2) of the Act

Letter of Deficiency - October 24, 1996, for violation of LAC 33:III.5151.F.3.a

Penalty Assessment - April 2, 1997, for the above cited violations for \$50,000.00

Amended Penalty Assessment - July 6, 1998, to amend the Penalty Assessment issued April 2, 1997, included the following violations for \$20,000:

- (a) LAC 33:III.5151.F.3.a
- (b) LAC 33:III.5151.F.3.c
- (c) LAC 33:III.5151.J.1.a.iii,
- (d) LAC 33:III.5151.F.2.a and
- (e) Section 2057 (A)(2) of the Act.

2. The nature and gravity of the violation:

Asbestos has been proven to be harmful and sometimes fatal if inhaled or ingested. The manner in which the renovation/demolition was conducted at the site could have resulted in the release of asbestos fibers to the atmosphere where they could be inhaled or ingested. A sample, No. 04279801, was taken during the course of the investigation and found to be positive for asbestos.

Regulations concerning the proper removal and storage of asbestos-containing materials are available and these regulations were discussed with Respondent's staff on numerous occasions with discussions ensuing about asbestos regulations, management plans, air sampling and procedures that must be taken when disturbing and removing and storing asbestos material. The inspectors also explained to Respondent's staff that a qualified and certified company representative must be utilized when handling the asbestos containing material. Based on the inspector's discussions with the Respondent during the inspections, the Respondent was aware of the regulations and the necessity of complying with the regulations to protect the public. During the inspections, the inspectors emphasized to the Respondent the importance of complying with the Louisiana Air Quality Regulations, in particular LAC 33:III.5151 and Chapter 27. MBA, a maintenance contractor for Respondent has a qualified/certified asbestos contractor/supervisor on its staff.

3. The gross revenues generated by the respondent:

In an income and expense statement from Respondent dated October 31, 1996, Respondent's income was stated for year to date (YTD) as \$1,345,183.90. Income from rental from State of Louisiana Leases on a yearly basis is stated to be \$1,437,617. Respondent submitted gross revenue information in the form of a Schedule K-1 (Partner's share of Income, credits, deductions, etc.). After a review of the above figures, the Department has determined Respondent has adequate gross revenues to pay a penalty.

4. The degree of culpability, recalcitrance, defiance or indifference to regulations or orders:

The Respondent owns and is renovating a building known as the Plaza Tower, located at or near 1001 Howard Avenue, New Orleans, Louisiana. Baha Towers, Limited Partnership has financial resources available to insure compliance with the regulations. The Respondent was made aware of the Louisiana Air Quality Regulations governing the handling of asbestos by the Department's inspector, on or about February 6, 1996, March 5, 1996 and June 26, 1996 during inspections at the Plaza Towers site. The previous owner of the building, which identified the asbestos locations in the Plaza Tower, also gave respondent an Environmental Study and Maintenance & Operation Plan which named the locations of the asbestos in the building. Respondent also has an Asbestos Management Plan, approved by the Department.

On or about July 1, 1996, Respondent was issued an Emergency Cease and Desist Order to immediately cease and desist operations that strip, remove, dislodge, cut, drill, or otherwise handle or disturb asbestos at the facility. On or about July 11, 1996, after a meeting with Respondent and Representatives of the Department, the Emergency Cease and Desist Order was terminated with the provision that the termination of the order was contingent upon Respondent's strict compliance with the applicable provisions of LAC 33:III.5151 and Chapter 27 of the Louisiana Air Quality Regulations. On or about August 13, 1996, a Notice of Violation and Potential Penalty was issued to Respondent for violations of Chapter 51 of the Regulations. On or about October 24, 1996, a letter of Deficiency was issued to Respondent for LAC 33:III.5151.F.3.a. On or about July 6, 1998, an Amended Penalty Assessment was issued to Respondent. All of the violations stipulated in the NOVPP issued to Respondent on or about August 13, 1996, were not included in the Amended Penalty Assessment issued on or about July 6, 1998. On or about August 19, 1998, an NOVPP was issued to Respondent for various violations of LAC 33:III.5151. One of the violations, LAC 33:III.5151.F.2.a, failure to submit a Form AAC-2, Notice of Demolition and Renovation, was a violation on all 3 documents. Three of the violations - LAC 33:III.5151.F.3.a, failure to remove regulated asbestos containing materials (RACM) before an activity began that would break up, dislodge, or similarly disturb the material; LAC 33:III.5151.F.3.i, failure to adequately wet the RACM and ensure that it remained wet until collected and contained or treated in preparation for disposal; and LAC 33:III.J.1.a.iii, failure to seal the RACM in leaktight containers, were violations cited on 2 documents. Based on the above documentation, Respondent has shown recalcitrance and indifference to following procedures for asbestos management, removal and the regulations concerning asbestos. MBA Services, a maintenance company for Respondent, has a Certified Asbestos Contractor/Supervisor on its staff and still fails to properly remove and/or manage the asbestos removal. Respondent also violated the terms of the termination of the Cease and Desist Order in that the order was terminated, fully contingent upon the strict

compliance with the applicable provisions of LAC

33:III.5151 and Chapter 27 of the Louisiana Air Quality Regulations. Documentation has been provided to show provisions of the termination of the Cease and Desist Order was not abided by on three separate occasions.

5. The monetary benefits realized through noncompliance:

A monetary benefit was realized in that the Respondent did not expend funds to purchase the proper equipment and supplies to remove and or encapsulate the asbestos. Respondent realized a monetary benefit by reducing expenses and the time required to complete the job in the following ways:

- a. Did not submit an AAC-2 Form informing the Department of the asbestos removal,
- b. By not removing the asbestos before an activity began that would break up, dislodge, or similarly disturb the material,
- c. By not adequately wetting the RACM and ensuring that it remained wet until collected and contained or treated in preparation for disposal,
- d. By not sealing the RACM in a leaktight container,
- e. By not storing the RACM in a labeled, secured area where it would not be subjected to disturbance or tampering and
- f. Bags of RACM were not labeled, using a label as specified by OSHA.

6. The degree of risk to human health or property:

Asbestos if handled improperly could be hazardous to the public health.

As stated in the Louisiana State University Asbestos Training Course Student Manual, improper handling of asbestos could cause the following diseases:

1. Asbestosis - the fibrotic scarring of the lungs;
2. Lung Cancer,
3. Mesothelioma - cancer of the chest cavity lining (pleural mesothelioma) and/or the abdominal cavity (peritoneal mesothelioma). This cancer spreads very rapidly and is always fatal; and
4. Cancer of the esophagus, colon, and pancreas, pleural plaques, pleural thickening, and pleural effusion.

Based on a thorough review of the health effects literature, EPA concluded that there is no level of exposure below which the risks of contracting an asbestos related disease are not zero (i.e. there is no threshold level of exposure). If there is no safe level of exposure to asbestos, the Department is responsible for instituting measures to control or eliminate exposure.

Any emission of a hazardous air pollutant from activities such as the dry removal of asbestos and failure to control the work area to prevent an emission of asbestos presents a high risk to public health.

7. Reporting-Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the department and whether the violation or noncompliance was concealed or there was an attempt to conceal:

The violations were not reported by the Respondent, but revealed during an unannounced inspection on or about April 27, 1998 at the Plaza Towers site located at or near 1001 Howard Avenue, New Orleans, Louisiana. The inspection was a result of a complaint received by the Department on or about April 27, 1998, of Respondent drilling holes in the floor and asbestos falling around workers.

8. Mitigation of damages-Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation:

No mitigating circumstances have been determined in this matter.

9. Enforcement Cost-The costs of bringing and prosecuting an enforcement action:

This case required State expenditures of more than 120 manhours and necessary materials at a cost of approximately \$2100.00

Regulations cited:

1. LAC 33:III.5151.F.2.a,
2. LAC 33:III.5151.F.3.a,
3. LAC 33:III.5151.F.3.f.i
4. LAC 33:III.5151.J.1.a.iii,
5. LAC 33:III.5151.J.1.a.vi,
6. LAC 33:III.5151.J.1.a.iv and
7. Section 2057 (A) (2) of the Act

After careful consideration of all the above stated factors, AQD recommends that BAHAR Development, Inc., BAHAR Towers Limited Partnership, Schumann Rafizadeh and Madonna Rafizadeh be charged with a penalty in the amount of \$120,000.00.



State of Louisiana
Department of Environmental Quality



M. J. "MIKE" FOSTER, JR.
GOVERNOR

January 22, 2003

L. HALL BOHLINGER
SECRETARY

CERTIFIED MAIL (7001 0320 0003 0931 0038)
RETURN RECEIPT REQUESTED

BAHAR DEVELOPMENT, INC.
BAHA TOWERS LIMITED PARTNERSHIP
c/o Mr. J. William Starr
Capella Law Firm
Agent of Service
3445 N. Causeway, Ste. 1001
Metairie, Louisiana 70002

RE: SECOND AMENDED PENALTY ASSESSMENT
ENFORCEMENT TRACKING NO. AE-P-97-0041B
AGENCY INTEREST NO. 38717

Dear Sir:

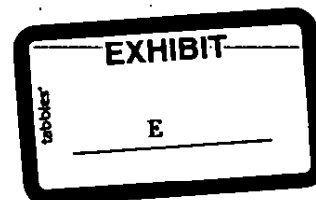
Pursuant to the Louisiana Environmental Quality Act (La. R.S. 30:2001, et seq.), the attached SECOND AMENDED PENALTY ASSESSMENT is hereby served on BAHAR DEVELOPMENT, INC., BAH TOWERS LIMITED PARTNERSHIP (RESPONDENT) for the violations described therein.

Any questions concerning this action should be directed to Ms. Shampa Banerjee at (225) 765-0391.

Sincerely,

Peggy M. Hatch
Administrator
Enforcement Division

PMH/SB/sb
Alt ID No. N/A
Attachment



c: Ms. Sheyda N. Chaney
Executive Vice President
BAHAR Development, Inc.
1001 Howard Avenue
New Orleans, Louisiana 70113

Ms. Myrna Edwards
Administrative Director
State of Louisiana Division of Administration
Facility Planning and Control
Post Office Box 94095
Baton Rouge, Louisiana 70804-9095

STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE

IN THE MATTER OF

BAHAR DEVELOPMENT, INC.
BAHA TOWERS LIMITED PARTNERSHIP
ORLEANS PARISH
ALT ID NO. N/A

PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT,
La. R.S. 30:2001, ET SEQ.

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*
* ENFORCEMENT TRACKING NO.
*
* AE-P-97-0041B
*
* AGENCY INTEREST NO.
*
* 38717
*
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SECOND AMENDED PENALTY ASSESSMENT

The Louisiana Department of Environmental Quality (the Department) hereby amends the AMENDED PENALTY ASSESSMENT issued to BAHAR DEVELOPMENT, INC., BAHA TOWERS LIMITED PARTNERSHIP, SCHUMANN RAFIZADEH AND MONDONA RAFIZADEH (RESPONDENT) on July 6, 1998 in the above-captioned matter as follows:

I.

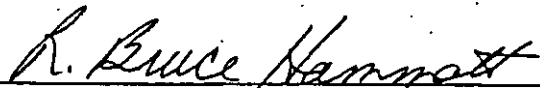
The Department hereby amends the Respondent's name to read as follows:

"BAHAR DEVELOPMENT, INC., BAHA TOWERS LIMITED PARTNERSHIP."

The Department incorporates all of the remainder of the original AMENDED PENALTY ASSESSMENT, ENFORCEMENT TRACKING NO. AE-P-98-0041A and AGENCY INTEREST NO. 38717 as if reiterated herein.

This SECOND AMENDED PENALTY ASSESSMENT is effective upon receipt.

Baton Rouge, Louisiana, this 22nd day of January, 2007/3



R. Bruce Hammatt
Assistant Secretary
Office of Environmental Compliance

Copies of a request for a hearing and/or related correspondence should be sent to:

Louisiana Department of Environmental Quality
Office of Environmental Compliance
Enforcement Division
P.O. Box 82215
Baton Rouge, LA 70884-2215
Attention: Mr. David R. Simmons

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
BAHAR DEVELOPMENT, INC.
BAHA TOWERS LIMITED PARTNERSHIP
c/o Mr. J William Starr
Capella Law Firm
Agent of Service
3445 N. Causeway, Ste. 1001
Metairie, Louisiana 70002
Tracking # AE-P-97-0041B

2. Article Number
 (Transfer from) **001-0000 0003 0931 0038**

PS Form 3811, August 2001

Domestic Return Receipt

SB

SERO

102595-01-M-0381

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent
John D. Staley ☐ Addressee

B. Received by (Printed Name) ☐ C. Date of Delivery
John D. Staley *12/29/03*

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

CDS # N/A
 AI # 38717



State of Louisiana
Department of Environmental Quality



M. J. "MIKE" FOSTER, JR.
GOVERNOR

February 16, 2003

L. HALL BOHLINGER
SECRETARY

CERTIFIED MAIL (7001 0320 0003 0931 0052)
RETURN RECEIPT REQUESTED

BAHAR DEVELOPMENT, INC.
BAHA TOWERS LIMITED PARTNERSHIP
c/o Mr. J. William Starr
Capella Law Firm
Agent of Service
3445 N. Causeway, Ste. 1001
Metairie, Louisiana 70002

RE: AMENDED PENALTY ASSESSMENT
ENFORCEMENT TRACKING NO. AE-P-98-0257A
AGENCY INTEREST NO. 38717

Dear Sir:

Pursuant to the Louisiana Environmental Quality Act (La. R.S. 30:2001, et seq.), the attached **AMENDED PENALTY ASSESSMENT** is hereby served on **BAHAR DEVELOPMENT, INC., BAH TOWERS LIMITED PARTNERSHIP (RESPONDENT)** for the violations described therein.

Any questions concerning this action should be directed to Ms. Shampa Banerjee at (225) 765-0391.

Sincerely,

Peggy M. Hatch
Administrator
Enforcement Division

PMH/SB/sb
Alt ID No. N/A
Attachment

EXHIBIT

F

c: Ms. Sheyda N. Chaney
Executive Vice President
BAHAR Development, Inc.
1001 Howard Avenue
New Orleans, Louisiana 70113

Ms. Myrna Edwards
Administrative Director
State of Louisiana Division of Administration
Facility Planning and Control
Post Office Box 94095
Baton Rouge, Louisiana 70804-9095

**STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE**

IN THE MATTER OF

**BAHAR DEVELOPMENT, INC.
BAHA TOWERS LIMITED PARTNERSHIP
ORLEANS PARISH
ALT ID NO. N/A**

**PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT,
La. R.S. 30:2001, ET SEQ.**

*
*
* **ENFORCEMENT TRACKING NO.**
*
* **AE-P-98-0257A**
*
* **AGENCY INTEREST NO.**
*
* **38717**
*

AMENDED PENALTY ASSESSMENT

The Louisiana Department of Environmental Quality (the Department) hereby amends the **PENALTY ASSESSMENT** issued to **BAHAR DEVELOPMENT, INC., BAHA TOWERS LIMITED PARTNERSHIP, SCHUMANN RAFIZADEH AND MONDONA RAFIZADEH (RESPONDENT)** on December 11, 1998, in the above-captioned matter as follows:

I.

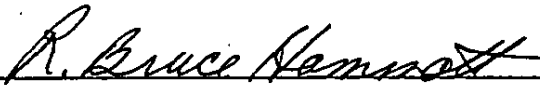
The Department hereby amends the Respondent's name to read as follows:

"BAHAR DEVELOPMENT, INC., BAHA TOWERS LIMITED PARTNERSHIP."

The Department incorporates all of the remainder of the original PENALTY ASSESSMENT, ENFORCEMENT TRACKING NO. AE-P-98-0257 and AGENCY INTEREST NO. 38717 as if reiterated herein.

This AMENDED PENALTY ASSESSMENT is effective upon receipt.

Baton Rouge, Louisiana, this 16th day of February, 2003.



R. Bruce Hammatt
Assistant Secretary
Office of Environmental Compliance

Copies of a request for a hearing and/or related correspondence should be sent to:

Louisiana Department of Environmental Quality
Office of Environmental Compliance
Enforcement Division
P.O. Box 82215
Baton Rouge, LA 70884-2215
Attention: Mr. David R. Simmons

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
BAHAR DEVELOPMENT, INC.
BAHA TOWERS LIMITED PARTNERSHIP
c/o Mr. J William Starr
Capella Law Firm
Agent of Service
3445 N. Causeway, Ste. 1001
Metairie, Louisiana 70002
Tracking # AE-P-98-0257A

2. Article Number
 (Transfer from) **7001-0330 0003 0931 0052**

PS Form 3811, August 2001

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☒ Addressee
X *John LaCasse*
 B. Received by (Printed Name) **FEB 20 2003**
John LaCasse
 C. Is delivery address different from item 1? ☐ Yes ☐ No
 D. If YES, enter delivery address below:

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
 4. Restricted Delivery? (Extra Fee) ☐ Yes ☐ No

CDS # N/A
 AI # 38717

Domestic Return Receipt SB SERO 102595-01-M-0381



State of Louisiana
Department of Environmental Quality



M. J. "MIKE" FOSTER, JR.
GOVERNOR

February 17, 2003

L. HALL BOHLINGER
SECRETARY

CERTIFIED MAIL (7001 0320 0003 0931 0021)
RETURN RECEIPT REQUESTED

BAHAR DEVELOPMENT, INC.
BAHA TOWERS LIMITED PARTNERSHIP
c/o Mr. J. William Starr
Capella Law Firm
Agent of Service
3445 N. Causeway, Ste. 1001
Metairie, Louisiana 70002

RE: AMENDED NOTICE OF VIOLATION & POTENTIAL PENALTY
ENFORCEMENT TRACKING NO. AE-NP-98-0200A
AGENCY INTEREST NO. 38717

Dear Sir:

The Department of Environmental Quality (the Department) hereby amends the **NOTICE OF VIOLATION AND POTENTIAL PENALTY, ENFORCEMENT TRACKING NO. AE-NP-98-0200** issued to Bahar Development, Inc., Baha Towers Limited Partnership (Respondent) on October 9, 1998, to read as follows:

The Department hereby amends the Respondent's name to read as follows:

"BAHAR DEVELOPMENT, INC., BAHA TOWERS LIMITED PARTNERSHIP."

The Department incorporates all of the remainder of the original **NOTICE OF VIOLATION & POTENTIAL PENALTY, ENFORCEMENT TRACKING NO. AE-NP-98-0200** and **AGENCY INTEREST NO. 38717** as if reiterated herein.

EXHIBIT

G



This AMENDED NOTICE OF VIOLATION & POTENTIAL PENALTY is effective upon receipt.

Sincerely,



R. Bruce Hammatt
Assistant Secretary
Office of Environmental Compliance

RBH/SB/sb
Alt ID No. N/A
Attachment

c: Ms. Sheyda N. Chaney
Executive Vice President
BAHAR Development, Inc.
1001 Howard Avenue
New Orleans, Louisiana 70113

Ms. Myrna Edwards
Administrative Director
State of Louisiana Division of Administration
Facility Planning and Control
Post Office Box 94095
Baton Rouge, Louisiana 70804-9095

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
BAHAR DEVELOPMENT, INC.
 BAHIA TOWERS LIMITED PARTNERSHIP
 c/o Mr. J. William Starr
 Capella Law Firm
 Agent of Service
 3445 N. Causeway, Ste. 1001
 Metairie, Louisiana 70002

Tracking # AE-NP-98-0200A

2. Article Number
 (Transfer from ~~404010320~~ 0003 0951 0021)

PS Form 3811, August 2001

Domestic Return Receipt

SB

SERO

102595-01-M-0381

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☐ Agent
W. C. Vanderbrook
 B. Received by (Printed Name) ☐ C. Date of Delivery
W. C. Vanderbrook **FEB 21 2003**
 D. Is delivery address different from item 1? ☐ Yes ☐ No
 If YES, enter delivery address below:

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

AI # 38717



SETTLEMENT PAYMENT FORM

Please attach this form to your settlement payment
and submit to:



Department of Environmental Quality
Office of Management and Finance
P. O. Box 4303
Baton Rouge, Louisiana 70821-4303
Attn: Darryl Serio, Fiscal Officer

Payment # _____

Respondent: **Bahar Development, Inc.**

Enforcement Tracking No(s): **AE-P-97-0041; AE-P-97-0041A; AE-P-97-0041B; AE-P-98-0257; AE-P-98-0257A; AE-NP-98-0200; and AE-NP-98-0200A**

Payment Amount: _____

AI Number: **38717, 66319**

Alternate ID No(s): _____

TEMPO Activity Number: _____

**For Official Use Only.
Do Not write in this Section.**

Check Number:

Check Date:

Check Amount:

Received Date:

PIV Number:

PIV Date:

Stamp "Paid" in the box to the right
and initial.

Route Completed form to:

**Peggy Hatch, Administrator
Enforcement Division**

**And copy Chris Ratcliff, Legal
Division**

Penalty Payment Form 07/18/04

EXHIBIT H

AE-P-97-0041. et al

CERTIFIED MAIL



7003 2260 0000 5824 6320



Office of the Secretary
Legal Affairs Division
P.O. Box 4302
Baton Rouge, Louisiana 70821-4302

TO:

WILLIAM J. STARR
CAPELLA LAW FIRM
3445 NORTH CAUSEWAY BLVD., SUITE 1001
METAIRIE, LA 70002

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
William J. Starr
Capella Law Firm
3445 N. Causeway Blvd., Ste. 1001
Metairie, LA 70002

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail

☐ Registered ☐ Return Receipt for Merchandise

☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

7003 2260 0000 5824 6320

Bahar